

(2019) 07 JH CK 0226

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 284 Of 2017, I.A. No. 809 Of 2018

Harshan Singh And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 192, 196, 199, 294, 323, 419, 420, 448, 452, 455, 467, 468, 469, 471, 504, 506
Code Of Criminal Procedure, 1973 — Section 340, 482

Citation : (2019) 07 JH CK 0226

Hon'ble Judges : Amitav K. Gupta, J

Bench : Single Bench

Advocate : Sanjay Kumar Pandey, Mohit Prakash, Tarun Kumar

Final Decision : Allowed

Judgement

1. The present petition has been filed for quashing the order dated 28.09.2016, passed in connection with Ketar P.S. Case No.10 of 2016, corresponding to G.R. No.1009 of 2016, pending in the court of learned Judicial Magistrate, 1st Class, Garhwa, whereby cognizance has been taken for the offence under Sections 448, 323, and 504 of the Indian Penal Code, against the petitioners.

2. Learned counsel for the petitioners has submitted that O.P. No.02 had lodged the Ketar P.S. Case No.10 of 2016 registered under Sections 192, 196, 199, 419, 420, 467, 468, 469, 471, 452, 455, 323, 294, 120B, 506, 34 of the Indian Penal Code. That the police after investigation submitted the closure report with the finding that there was lack of evidence. It is submitted by the learned counsel that O.P. No.02 is repeatedly instituting, one after another, cases against the petitioners and in all the cases after investigation the final form has been submitted by the police. That the instant case has been instituted with a malafide intention as in the earlier cases the police had found the cases not to be true and the application of the proceeding under Section 340 Cr.P.C was rejected by the court.

Learned counsel has relied on the decisions of the Supreme Court rendered in the case of *Sunder Babu & Ors. Vs. State of Tamil Nadu*, (2009) 14 SCC 244 and *Vineet Kumar & Ors. Vs. State of Uttar Pradesh & Anr.*, (2017) 13 SCC 369, and submitted that it has been observed by the Supreme Court that when the court, on the basis of the material evidence, is of the opinion that the case has been instituted maliciously with a malafide intention, then the court should invoke its inherent power under Section 482 Cr.P.C., for quashing such mala fide prosecution.

3. Learned counsel appearing on behalf of O.P. No.02 has submitted that the impugned order will reveal that the court has perused the statement of the witnesses in paras - 5, 6, 7, 8 and 11 of the case diary and recorded its satisfaction that a prima facie case is made out for taking cognizance of the offences under Sections 448, 323, and 504 of the Indian Penal Code, against the petitioners. It is submitted the cases, in which final form was submitted, on protest petition of O.P. No.02, the court has taken cognizance of the offence. That the petitioners have also instituted several cases against O.P. No.02. That the question of malafide can only be considered when the evidence is led before the court below. It is submitted that the facts of the decisions, relied upon by the learned counsel for the petitioners, are not applicable to the facts of the present case.

4. Heard. Admittedly, the police had submitted the closure report. It is settled proposition that the court is not supposed to act as a mouthpiece of the prosecution or to act as a post-office by accepting the findings of police report. However, in case the court disagrees or differs with the closure report then it is required to assign cogent reasons for not accepting or disagreeing with the findings of the police. In doing so the court should discuss the evidence, as available on record, for recording its satisfaction that the materials on record are contrary to the closure report.

It is apparent that the court below has only cited the paragraph of the case diary. No reasons have been assigned nor satisfaction recorded that the statement of the witnesses make out a prima facie case for taking cognizance of the offences against the petitioners. For the foregoing reasons, the order dated 28.09.2016 is, hereby, quashed and set aside.

I.A. No.809 of 2018, filed for initiation of a enquiry under Section 340 Cr.P.C., is frivolous and stands rejected.

The matter is remitted to the court below to pass a reasoned and speaking order on consideration of materials available on record, in accordance with law.

5. With the said direction, the criminal miscellaneous petition stands allowed.